

BARRY E. HINKLE, Bar No. 071223
NICOLE M. PHILLIPS, Bar No. 203786
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
Telephone (510) 337-1001/Facsimile (510) 337-1023

Attorneys for Plaintiffs

GENE FARBER
Law Offices of Gene A. Farber
4258 26th Street
San Francisco, CA 94131
Telephone (415) 956-1800/Facsimile (415) 282-4228

Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their capacities as) No. 1:08-CV-5652-CRB
Trustees of the LABORERS HEALTH AND)
WELFARE TRUST FUND FOR NORTHERN)
CALIFORNIA; LABORERS VACATION-HOLIDAY)
TRUST FUND FOR NORTHERN CALIFORNIA;)
LABORERS PENSION TRUST FUND FOR)
NORTHERN CALIFORNIA; and LABORERS)
TRAINING AND RETRAINING TRUST FUND FOR)
NORTHERN CALIFORNIA; and THE BOARD OF)
TRUSTEES, in their capacities as Trustees of the)
CEMENT MASONS HEALTH AND WELFARE)
TRUST FUND FOR NORTHERN CALIFORNIA;)
CEMENT MASONS PENSION TRUST FUND FOR)
NORTHERN CALIFORNIA; CEMENT MASONS)
VACATION/HOLIDAY TRUST FUND FOR)
NORTHERN CALIFORNIA; CEMENT MASONS)
APPRENTICESHIP AND TRAINING TRUST FUND)
FOR NORTHERN CALIFORNIA,)

Plaintiffs,

v.

VARGAS & ESQUIVEL CONSTRUCTION, INC., a
California Corporation,

Defendant.

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT;
(PROPOSED) ORDER**

Date: March 27, 2009
Time: 10 a.m.
Courtroom: 17thth Floor

1 The parties to the above-entitled actions jointly submit this Case Management Conference
 2 Statement and Proposed Order and a Stipulation to Continue the Case Management Conference for
 3 approximately 60 days, filed herewith.

4 **A. FACTS AND ALLEGATIONS**

5 The Plaintiffs in the consolidated matter are Trustees representing Laborers Union or
 6 Cement Masons Union employee benefit plans created by written Trust Agreements subject to and
 7 pursuant to section 302 of the Labor Management Relations Act (29 U.S.C. § 186) and multi-
 8 employer employee benefit plans within the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C.
 9 §§ 1002, 1003 and 1132).

10 Defendant VARGAS & ESQUIVEL CONSTRUCTION, INC., a California Corporation,
 11 has been an employer within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C. §§
 12 1002(5), 1145) and an employer in an industry affecting commerce within the meaning of section
 13 301 of the LMRA (29 U.S.C. § 185). Plaintiff alleges that Defendant has also been a member of
 14 the Engineering & Utility Contractors Association (hereinafter referred to as EUCA), and by virtue
 15 of such membership, became subject to all the terms and conditions of the Laborers Master
 16 Agreement (hereinafter “Laborers Agreement”) and the Cement Masons Master Labor Agreement
 17 (hereinafter “Cement Masons Agreement”).

18 The Laborers and Cement Masons Agreements provide for prompt payment of all
 19 delinquent contributions to the various Trust Funds, and provide for the payment of interest on all
 20 delinquent contributions, liquidated damages, attorneys’ fees, and other collection costs, and for
 21 the audit of the signatory employer or employers’ books and records in order to permit the
 22 Plaintiffs to ascertain whether all fringe benefit contributions have been timely paid as required by
 23 the applicable labor agreements and law.

24 Plaintiffs THE BOARD OF TRUSTEES, in their capacities as Trustees of the LABORERS
 25 HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS
 26 VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS
 27 PENSION TRUST FUND FOR NORTHERN CALIFORNIA; and LABORERS TRAINING AND

1 RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA, (hereinafter “Laborers Trust
 2 Funds”) allege that Defendant has failed, neglected, or refused to make timely fringe benefit
 3 contributions to the Laborers Trust Funds as required by the Laborers Agreement and Trust
 4 Agreements establishing Plaintiff trust funds, and there is now due and owing and unpaid to
 5 Plaintiffs contributions in the sum of at least \$16,252.86 and liquidated damages and interest in the
 6 sum of at least \$1,669.72 for hours reported, but not paid, for the months of February 2008 through
 7 July 2008; and liquidated damages and interest for hours reported and paid, but paid late, for the
 8 period of November 2005 through May 2008, in the sum of at least \$10,772.71.

9 Plaintiffs THE BOARD OF TRUSTEES, in their capacities as Trustees of the CEMENT
 10 MASONS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA;
 11 CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; CEMENT
 12 MASONS VACATION/HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; CEMENT
 13 MASONS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN
 14 CALIFORNIA, allege that Defendant has failed, neglected, or refused to make timely fringe
 15 benefit contributions as required by the Cement Masons Agreement and Trust Agreements
 16 establishing Plaintiff Cement Masons Trust Funds there is now due and owing and unpaid to
 17 Plaintiff Cement Masons Board of Trustees contributions in the sum of at least \$32,520.87 and
 18 liquidated damages and interest in the sum of at least \$4,823.06 for hours reported, but not paid,
 19 for the months of December 2007 through September 2008; and liquidated damages and for hours
 20 reported and paid, but paid late, for the period of November 2005 through November 2007 in the
 21 sum of at least \$6,830.00.

22 Plaintiffs bring this suit against Defendant to collect said amounts owed and allege that
 23 Defendant breached its contracts with Plaintiff Trust Funds and their fiduciaries under ERISA.
 24 Plaintiffs also request an audit to be performed of Defendant’s books and records.

25 Defendant denies Plaintiffs’ material allegations, and further denies that Plaintiffs are
 26 entitled to relief as requested.

B. JURISDICTION AND SERVICE

This action arises under and is brought pursuant to section 502 of the Employee Retirement Income Security Act, as amended (ERISA), 29 U.S.C. § 1132, and section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. The jurisdiction of this Court is founded on 28 U.S.C. § 1331.

Venue properly lies in this district court because a substantial part of the events and omissions giving rise to these claims occurred in this district, including, but not limited to Defendant's master agreements with Plaintiffs, which requires that trust fund contributions are due and payable in the County of San Francisco.

All parties have been served and appeared.

C. LEGAL ISSUES

1. What amounts, if any, are properly owed to the Trust Funds for contributions, liquidated damages, interest, and audit costs for violations of the Defendant's collective bargaining agreement and Trust Agreements referenced therein.

2. Whether the Complaint in this action states a claim upon which relief can be granted.

D. MOTIONS

Plaintiffs and Defendant anticipate settling this matter, but if it does not settle, Plaintiffs anticipate filing a motion for summary judgment or summary adjudication.

E. AMENDMENT OF PLEADINGS

None anticipated, unless to add additional parties as revealed in discovery.

F. EVIDENCE PRESERVATION

The parties have taken necessary steps to preserve all relevant evidence presently in their respective possession and control.

G. DISCLOSURES

The parties will exchange initial disclosures prior to the Case Management Conference.

H. DISCOVERY

The parties do not agree to any limitation regarding discovery, other than the limitations specified in the Federal Rules of Civil Procedure. The parties anticipate settling this matter and have not agreed upon a discovery cut-off date at this time.

I. CLASS ACTIONS

The instant matter is not a class action.

J. RELATED CASES PENDING

None.

K. RELIEF

Plaintiffs pray judgment against Defendant, Vargas & Esquivel Construction, as follows:

1. That Defendant be ordered to pay Plaintiff Laborers Trust Funds contributions in the amount of \$21,447.39, plus interest thereon;
2. That Defendant be ordered to pay Plaintiff Laborers Trust Funds liquidated damages and interest in the amount of \$15,623.25, plus interest thereon;
3. That Defendant be ordered to pay Plaintiff Cement Masons Trust Funds contributions in the amount of \$35,033.15, plus interest thereon;
4. That Defendant be ordered to pay Plaintiff Cement Masons Trust Funds liquidated damages and interest in the amount of \$12,899.38, plus interest thereon;
5. That Defendant be ordered to pay each the Plaintiffs actual damages according to proof;
6. That this Court issue an Order directing and permanently enjoining Defendant to submit to the Trust Funds, all reports and contributions due and owing by Defendant, plus interest, attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2);
7. That this Court issue an Order permanently enjoining Defendant for so long as it remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely submit required monthly contributions reports and payments as required by the terms of the

collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

8. That Defendant be ordered to pay attorney's fees;

9. That Defendant be ordered to pay costs of suit herein;

10. That Defendants be ordered to submit to an audit by Plaintiffs;

11. That this Court grant such further relief as this Court deems just and proper; and

12. That this Court retain jurisdiction of this matter to enforce the Order compelling an

Audit and payment of all amount found due and owing.

L. ADR

The parties agree to participate in court-sponsored settlement conference and/or mediation.

**M. CONSENT TO ASSIGNMENT OF THIS CASE TO A UNITED STATES
MAGISTRATE JUDGE FOR TRIAL:**

Neither of the parties consents to assignment of this case to a United States Magistrate Judge for trial.

N. OTHER REFERENCES

The case is not suitable to binding arbitration, a special master or the Judicial Panel.

O. NARROWING OF ISSUES

Plaintiffs believe that the issues may be narrowed by means of a motion for summary judgment or summary adjudication.

P. EXPEDITED SCHEDULE

The case is not suited for expedited scheduling.

Q. SCHEDULING

The Parties anticipate settling this matter and have not agreed upon a schedule.

R. TRIAL

Defendant has demanded a jury trial.

S. CONTINUANCE OF CASE MANAGEMENT CONFERENCE

The parties have already commenced settlement negotiations and Defendant has agreed to

1 allow Plaintiffs audit entry to audit their payroll records to see what, if any, additional fringe
2 benefit contributions are owed. Plaintiffs' legal counsel has indicated that she will be on vacation
3 on the day of the case management conference, and as lead trial counsel, she requests the ability to
4 attend the conference herself. For these reasons, the Parties respectfully request by a Stipulation
5 attached hereto that this Case Management Conference be continued for at least 60 days.

6
7 Dated: March 13, 2009

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

9
10 By: //s//

NICOLE M. PHILLIPS
Attorneys for Plaintiffs

11 Dated: March 13, 2009

12 FIRM

13
14 By: //s// Signature Authorized

GENE FARBER
Attorneys for Defendant

15
16 120217/524034

~~[PROPOSED]~~ ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court and as per the Parties' request, the Parties are referred to Alternative Dispute Resolution and the Case Management Conference has been continued until: June 5, 2009

